CLECs. Significant portions of the CLEC industry should not lose their right to collocate equipment simply because of the accident that the affiliate has chosen a different implementation strategy.

Similarly, there should be no "stamps of approval" required for collocated equipment, other than Network Equipment and Building Specifications ("NEBS") level 1 compliance (but only to extent an ILEC complies with this standard itself). As NorthPoint points out in Attachment B to these comments, level 1 is intended to capture all appropriate safety issues, while levels 2 and 3 relate to reliability instead, a topic that is of no concern to the ILEC. To the extent that any ILEC believes there are safety issues not currently contained in NEBS, it should be its obligation to alter the NEBS level 1 standard, and not to unilaterally announce its own "safety" requirements.

ALTS and its members fully understand concerns that exist about the availability of collocation space, and propose vigorous measures to mitigate that issue infra. However, ALTS believes that space concerns should not and need not be addressed by outlawing certain kinds of technology on an ad hoc basis. While ALTS fervently hopes the current proceeding will lead to a decrease in collocation costs, the cost per square foot for collocation will easily remain more than adequate to provide all collocators with a powerful incentive against placing unduly large equipment.

As addressed in ALTS' section 706 petition, the Commission needs to order ILECs to provide any and all kinds of cross-connects in collocated space, including collocated space shared among CLECs. This need arises, for example, because BA-NY's federal and New York tariffs contain differing rates and terms for physical collocation.[32] BA-NY has used this distinction between federal and state collocation to limit the functionality of CLEC collocation cages. The New York PSC has ordered BA-NY to allow collocated CLECs to establish cross-connection between each other's cages, but the Commission has issued no similar directive. As a result, BA-NY takes the position that it will not allow CLECs with "federal" cages to cross-connect to CLECs with "state" cages, even though the cages are identical in a technical sense. In this way, BA-NY appears to be using any means available to limit the ability of CLECs to use collocated equipment cost effectively.

Finally, the Advanced Wireline Services Order proposes not to require collocation of equipment used to provide enhanced services (at ¶ 132). This restriction seems appropriate given than only telecommunications carriers, and not information service providers, are entitled to request collocation in the first place.

---

[32] NY PSC Section 271 Proceeding Min., at 1397-98.

2. Allocation of Collocation Space

ALTS requested specific relief in its section 706 petition intended to conserve collocation space. These proposals included:

- Provision of "cageless" collocation that allows CLECs to avoid the cost of constructing enclosures for their collocation space, and allows them to collocate in a total area of less than 10 square feet.[33]

- Provision of collocation cages of 25 square feet, and other increments less than 100 square feet.

- Allowing multiple CLECs to share a single collocation cage.

- Establish reasonable and nondiscriminatory rules for the allocation of space preparation charges among collocated carriers.

- Establish reasonable and nondiscriminatory deployment intervals for new collocation arrangements, and expansion of existing arrangements.

- As an ongoing practice, incorporate into the Commission's collocation rules the most innovative and effective collocation provisions established by the

---

[33] More cost-effective collocation solutions will spur collocation in residential and less-densely populated areas. And because it more efficiently uses central office floor space, cage-less physical collocation also will make collocation available in many offices where ILECs unilaterally maintain that there is "no space" for cage-based physical collocation. One Bell Atlantic witness recently testified before the Massachusetts Department of Telecommunications and Energy that cage-less physical collocation would permit collocation in every Bell Atlantic central office in the state, and explicitly stated that cage-less physical collocation is a "highly efficient" utilization of central office space. He also admitted that cage-based physical collocation is a "highly inefficient" use of central office space. See Testimony of Karen Maguire, Bell Atlantic - Massachusetts, at 7, in Petition for Arbitration of Covad Communications Company, D.T.E. 98-21 (May 11, 1998).

State commissions.[34]

The Advanced Wireline Services Order implemented these ideas by proposing, among other solutions: (1) shared collocation cages; (2) size restrictions on requests; and (3) cageless collocation (at ¶ 137). In particular, ALTS supports the Advanced Wireline Services Order's conclusion that: "Given that incumbent LECs currently maintain control over competitive LEC equipment in shared collocation space, we tentatively conclude that carriers should be able to resolve any security concerns raised by cageless collocation" (at ¶ 141).

At the present time the New York Public Service Commission is examining specific issues implicated in providing cageless collocation, and shared collocation space. For example, Intermedia submitted a proposal appended as Attachment C. In that proposal Intermedia states:

> "CLEC Common Collocation Issues : The primary issue raised in association with the CLEC Common Space collocation proposal was that associated with security. All other issues were resolved, at least at a high level, during the collaborative sessions based upon agreements such as those to utilize union labor, locked cabinets, bonded employees, documented certification procedures, etc. In regard to the security issue, BA has repeatedly stated that access in this instance is not like that of third party access for the installation of equipment. As the above diagram and the following narrative show, such concerns do not have a sound basis.
>
> "In the normal course of work in the above hypothetical, certified vendors have access to all of the cable racks in association with the installation of both power and telecom

---

[34] See also HAI Broadband Paper at 51-53.

cable and the installation of any additional racking. In establishing racking or pulling cables (BA or CLEC) the vendors have overhead access to racks directly over live BA equipment. Furthermore, certified vendors may work directly beside BA equipment in installing BA racks and transmission equipment as well as CLEC virtually located equipment and CLEC common space collocated equipment. All of this access by third party technicians is by occasional supervision rather than line of sight supervision. In association with work on Racks 2-4, the third party vendor may be working directly beside BA "LIVE" equipment. Thus, access to Rack 4 for third parties providing maintenance, provisioning and repair services to the CLEC would not materially insert additional inadvertent or deliberate security concerns into this environment. Existing security concerns might be proportionally increased only because of the additional time third parties might be within the common space environment. Any such concern could be addressed by proper notice of third party access allowing traditional BA supervisory observation on an as needed basis. Since BA will terminate UNEs on the equipment under either scenario, it will have total control over BA network access and any BA services. CLEC technicians with proper training on CLEC equipment and access to CLEC assignment and provisioning systems are best positioned to protect CLEC services.

"Collocation with Escort Issues: Issues specific to BA's collocation with escort proposal include:

Mixing of union and non-union labor.
Contention for BA technicians during times of network outage.
Contention for BA technicians during normal working hours.
Introduction of potential delays in resolving CLEC network outages.
Unnecessary duplication of technicians.
Discrimination in the provision of maintenance, repair and provisioning functions.
Discrimination in availability based on actions of other CLECs and BA's space availability.
Through "migration", allows BA to designate point of collocation rather than allowing CLEC to interface at any technically feasible point as required by Telecom Act.
"Detailed" supervision by BA employees not familiar with CLEC equipment and without access to CLEC systems.
Discrimination as it relates to liability.

"Intermedia Position: The NY PSC should adopt the CLEC Common Space Collocation proposal submitted jointly by the CLECs during the August collaborative. That proposal utilizing BA certified third party vendors best balances the security concerns of the industry with the CLEC needs to

access space on a non-discriminatory and economic basis. If alternatively the Commission adopts the Collocation with Escort proposal of BA (against Intermedia objection), it must be modified to be offered in any central office where the CLEC is required to utilize virtual collocation or where no conditioned physical collocation space exists. Furthermore, any migration must allow 24 months for migration, provide for installation of new equipment within existing frames during that period, and require rebates of any non-recurring charges associated with initial establishment of the collocation with escort arrangement. Under any collocation with escort arrangement, BA must also assume financial liability associated with damage by installers to the equipment of other CLECs. Finally, BA must give CLECs priority when emergency situations exist and contention for BA technicians occurs."

Covad Communications has also addressed security issues before the NYPSC:

"PROPOSED LIST OF PROVISIONING, MAINTENANCE AND REPAIR QUALIFICATIONS FOR THIRD-PARTY CONTRACTOR COLLOCATION VENDORS

"GENERAL:

"Certification Process to be completed within 30 days from Request for Certification.

"BA and CLECs will develop a list of approved third party vendors. Approved vendors will use union employees of the same union and local as used by BA in the central office where the work is to be performed. BA reserves the right to remove vendors or their personnel from the approved list. CLECs also retain the ability to discontinue the use of a third party vendor.

"PHASE I:

Request for certification

Registration with TRG Supplier Relations

Credit and insurance approval

Request for Information

"PHASE II:

"The potential third party vendor shall, among other things:

Utilize technicians who have demonstrable relevant industry experience including having verifiable, on-the-job experience, working knowledge of the central office environment, and a history of conforming with safety, fire, environmental, and security practices.

Utilize technicians who have demonstrated that they are capable of performing additions, removals, and modifications on in-service equipment or circuits within a central office environment.

Utilize technicians who have the ability to perform critical functions such as analyze, troubleshoot, program, and test in-service equipment, all with no more than minimal assistance.

Utilize technicians who have the ability to maintain existing quality installation standards (addressed in BA certification process for installers).

Utilize technicians who have attended manufacturer training on provisioning, maintenance, repair with CLEC specific requirements.

Utilize technicians who have attended BA training on central office practice and procedure, Methods of Procedure, safety, Safe Time Practices, when available. Based on the experience level of the technicians, this requirement may be in whole or in part waived to the extent the technicians have adequately demonstrated superior qualifications in the aforementioned requirements.

"PHASE III:

Meets all requirements

Certification of Supplier"

The above submissions by Covad and Intermedia demonstrate the particular issues involved concerning collocation security, and also demonstrate how the NYPSC is giving close scrutiny to

these factors.[35] Rather than needlessly duplicate the NYPSC's efforts, ALTS urges the adoption of NTIA's proposal that all state collocation determinations should be presumptively enforceable in any other jurisdiction.[36] Thus, New York collocation rules could be applied in Illinois at a CLEC's option, unless the Illinois incumbent could somehow distinguish its particular situation.[37] Similarly, when some other state eventually issues even more sophisticated rules, those rules could be enforced in New York, absent a demonstration by BA-NY that they should not be applicable.

The Commission's adoption of this "rising tide" approach makes perfect sense as a policy matter. Collocation arrangements are not some "bargain" an ILEC can strike, and then hang on to regardless of how various concerns are increasingly cured over time. This Commission should issue a national rule that any state-approved collocation arrangement is presumptively available

---

[35] Other collocation space conservation proposals (such as required "grooming" of central office space by ILECs) are detailed by NorthPoint in Attachment B.

[36] See NTIA ex parte dated July 17, 1998, at 15.

[37] In addition to utilizing state orders on collocation, CLECs should be able to employ any voluntary arrangements offered by ILECs. See, e.g., Dakota Services' collocation in Chicago: "When collocated in an Ameritech CO, Dakota doesn't buy floor space and cage up its equipment as most competitive local exchange carriers do. The company goes in with as little equipment as possible -- usually a single 7-foot rack -- and buys support services from Ameritech's on-site technicians" (Intera@ctive Week, September 25, 1998).

in any other state unless an ILEC can show it is somehow inapplicable.

3. Space Exhaustion

While the Commission has addressed the issue of space exhaustion separately from equipment restrictions, and the various forms of collocation, the issue of space scarcity runs through each of these topics. Much of the virtue in the shared and cageless collocation arrangements discussed above is the substantial reduction in space requirements.

Concerning concrete proposal for mitigating the consequences of space exhaustion, ALTS supports the proposals offered by NorthPoint in an Attachment. These measures are the minimum necessary to assure that ILECs make efficient use of competitively valuable central office collocation space, while still minimizing the demands imposed on regulators. Given the Commission's experience in prohibiting the "warehousing" of various competitively valuable network resources, such as 800 numbers, for example, the NorthPoint proposal should form the basis for minimum national rules to conserve collocation space.

Finally, the Advanced Wireline Services Order asks whether its tentative collocation requirements "may affect existing collocation arrangements" (at ¶ 150). The answer is that they most certainly should affect all outstanding agreements, particularly if new agreements are negotiated prior to the

effective date of this rulemaking. The best way to accomplish this goal is to include a "fresh look" mechanism whereby agreements negotiated prior to the rulemakings effective date can be reopened and negotiated subject to its provisions.

B. Local Loop Requirements

The HAI Broadband Paper identifies the UNEs needed in order to provide facilities-based competitive broadband services over what they refer to as the Broadband Local Exchange Network ("BLEN"; at 51-52):

- Network Interface Device (NID)
- NID-mounted splitter
- Distribution facility
- Feeder/distribution interface
- Feeder facility
- Bandwidth enhancement device
- ADSL loop transport (DLC cases only)
- Broadband signal grooming
- Fast packet switching
- Broadband interoffice transport

Taken together, these components fall into three general categories:

- Broadband access, which is the broadband equivalent of the local "loop" that connect end users to the local CO.
- The broadband switch located in the CO

- Exchange area interoffice transport

The scope of the BLEN analysis is necessary because the function of broadband loops cannot be addressed, or even identified, in isolation from the remainder of the broadband operation. The particular xDSL technologies discussed in the Advanced Wireline Services Order simply constitute enhancements to today's physical layer analog and ISDN loops that fall into two distinct categories: (1) wire pairs to a serving wire center, or (2) wire pairs to a feeder-distribution interface at which a carrier system takes over (id. at 71). The BLEN analysis places the questions raised about loops by the Advanced Wireline Services Order into proper perspective by introducing the appropriate framework for resolving competitive broadband questions.

1. Adoption of National Standards

The provisioning of broadband-capable loops to CLECs creates "an enormous number of opportunities for the ILECs to practice discrimination ... To precisely define non-discriminate requirements for each of these potential forms of abuse will be time-consuming, complex, potentially impossible in the face of a determined effort on the part of the ILECs to thwart the requirements, and further difficult when it come to defining related monitoring and reporting requirements" (id. at 75-76). These forms of abuse include:

- An ILEC selectively deploys xDSL technologies in areas where its own subsidiary desires them.
- The ILEC can find xDSL-capable loops when its own subsidiaries needs them, but not when a CLEC needs them.
- The loops provided to the subsidiary are on the average more suitable for broadband transmission than are those provided to the CLECs.
- The ILEC determines that collocation space is available in COs where its subsidiaries requires it, but not in COs where a CLEC wishes to collocate.
- The ILEC is selectively slow to deploy SONET management systems on the interoffice links from COs to POPs.
- ILEC customer service representatives imply that access to ISPs will be of better quality if provided directly via the ILEC broadband network than if connected through a CLEC network.

Beyond these possibilities, the current absence of specified interfaces for access to these underlying loop elements will create problems until robust national standards are in place. ILECs are likely to oppose the creation of such standards as a means of delaying CLEC entry into competitive broadband services (HAI Broadband Paper at 76). Accordingly, the Advanced Wireline Services Order is clearly correct concerning the desirability of "uniform standards" (at ¶ 154), that would serve as minimum standards for the states (at ¶ 155).

In order to assure the prompt development of minimum national standards, the Commission should take the following actions:

- Find that minimum national standards for loop element interfaces is in the public interest.
- Impose a bona fide negotiation obligation upon all ILECs

pursuant to section 251(c)(1) to negotiate such standards directly with CLECs upon request, notwithstanding the existence of current interconnection agreements. Such standards requests may be referred to standards bodies only upon the express agreement of the requesting CLEC.

- Where a CLEC has not negotiated standard interfaces with a CLEC, it should be able to: (1) invoke any loop standards implemented elsewhere in the same state between CLECs and ILECs; or, in the event no such standards exist in a state (2) invoke any loop standards implemented elsewhere in the United States between CLECs and ILECs, absent a showing by the ILEC that such standards cannot be implemented.

- Permit CLECs to bring any inconsistencies that may exist between different state standards to the Commission for resolution.

In addition to enacting these immediate national standards, the Commission should provide guiding supervision over the emergence of advanced services by adopting the guiding "technology principles" proposed and discussed in detail in the HAI Broadband Paper (at 74-92):

1) The rules the Commission adopts should not be narrowly-constructed to apply to xDLS only, but should deal with the Broadband Local Exchange Network generally (at 74).

2) The ILECs must provide an end-to-end broadband capability that extends from the premises to the Points of Interconnection ("POIs") of CLECs (at 75).

3) There should be no differentiation between the regulated entity and the separate subsidiary in terms of the former providing unbundled narrowband network elements and the latter adding bottleneck broadband elements such as DSLAMs (at 78).

4) ILECs should be required to provide all unbundled components of their broadband networks to CLECs as UNEs (at 81).

5) In addition to requiring the provisioning of UNEs, the unbundling of the broadband network can also be accomplished through specifications of particular access configurations

(at 85).

6) CLECs should be able to collocate transmission equipment and broadband switches in the CO, switch hub, or both, depending of the location of the ILEC broadband switch (at 87).

7) ILEC broadband offerings should not be allowed to bind broadband access to a particular ISP, thereby lessening or eliminating the role of the CLECs in carrying Internet traffic. Connections to ISPs should be switched connections (at 88).

8) To the extent the broadband access technology can jointly support voice and broadband data services, as is the case with ADSL, subscribers should be able to separately designate which entity provides its voice and broadband data service. Given that end user request, CLECs should not be forced into an inefficient arrangement for providing either or both services (at 89).

9) Regulations should promote non-discriminatory provision of network access by the ILECs to the CLECs, including timely development of interface specifications (at 90).

One of the Commission's cental tasks in encouraging broadband competition is to identify the various needs of CLECs in this marketplace, and then make sure that all these needs are addressed without annointing one particular entry strategy as the only available option. The emphasis on xDLS and its assorted implementing technology (DSLAMs, copper loops with ATU-Rs, etc.) is certainly understandable, given the current focus on this service. But the Commission should avoid picking the "right" way for CLECs to compete for broadband services, and the best way to do that is to employ the BLEN analysis set forth in the HAI Broadband Paper, support multiple broadband entry strategies, and let the marketplace sort out the best.

2. Loops and Operations Support Systems

Even if the above approach is adopted, the familiar specter of "network harms" will likely once again haunt the competitive marketplace, as ILECs contend that the signal strengths of xDSL implementations requires "caution," or even the prohibition of competitive facilities from their remote terminals ("RTs"). As for Integrated Digital Loop Carrier ("IDLC"), technical infeasibility and vendor incompatibility will be urged as excuses for non-compliance.

Parity of access to broadband-ready loops will require the Commission to dispel these contentions, and take vigorous pro-competitive action. ILECs presumably are already creating inventories of data-capable copper loops that can support various forms of DSL (HAI Broadband Paper at 77-79). These inventories, as well as the particular testing functions, need to be made available to CLECs as individual UNEs on a real-time basis to assure full parity of loop access. The Advanced Wireline Services Order is clearly correct that: "incumbent LECs should provide requesting competitive LECs with sufficient detailed information about the loop so that competitive LECs can make an independent determination about whether the loop is capable of supporting the xDSL equipment they intend to install" (at ¶ 157).

As the Advanced Wireline Services Order also notes, the Commission must insure that its regulatory approach does not become so technologically dependent that it becomes doomed to

early obsolescence (at ¶ 157). The ILECs certainly expect to someday deploy fiber to the curb or to the home, thereby eliminating any need to use xDSL-based copper systems. These changes will require the Commission to evolve its loop requirements in parallel with the technology changes.

3. Loop Spectrum Management

Properly speaking, loop spectrum management is simply a subset of the national standards issue addressed above in Part III.B.1. However, these issues are sufficiently novel to merit amplification.

At bottom, the higher speeds achieved by xDSL without the use of "repeaters" employed for current high speed loop systems is the result of higher signal strength and some form of quadrature amplitude modulation not significantly different than home modems. But these higher signal strengths do create issues concerning "crosstalk" interference within loop binder groups. For example, it appears that different modulation systems do not exist successfully in the same binder group, such that HDSL systems (which use 2B1Q signaling) would interfere with DMT ADSL. Furthermore, even DSLs using the same modulation will interfere with one another at some point, perhaps with as few as 5-12 customers within a 24 loop binder.

One way to handle such problems would be to limit the number of DSL customers in a single binder sheath, but this effectively

limits the ubiquity of the service. Other approaches are to lower deployment distances, require asymmetric speeds, etc. As the Advanced Wireline Services Order notes, these issues are currently being addressed by existing standards bodies, as well as vendors and ad hoc groups such as the ADSL Forum.

While ALTS applauds the efforts of the T1E1.4 working group of ANSI concerning spectrum management standards, this not a situation where solutions from existing standards bodies are likely to be effective. First, the success of any loop plant interference "solution" can only be determined in the field, not on the laboratory bench, and currently there is little experience with field deployment of DSL, particularly with multiple DSL technologies in the same loop plant. Second, because most DSL technologies are currently proprietary, resolution of these issues are effectively in the hands of the equipment vendors, not standards bodies.

ALTS and its members propose to work with the vendors and the incumbents in resolving these issues as quickly as possible. However, there are specific actions the Commission can take to help. First, the Commission should not adopt any "first in, always in" rule (described under the more mellow term of "riparian rights" in the Advanced Wireline Services Order). If there is any virtue in such an approach, it should first be proposed by a wide spectrum of competitors. Second, the Commission should adopt a rule that no ILEC is permitted to

exclude non-affiliated CLECs from placing DSL customers within loop plant unless that ILEC has also, at a minimum: (1) publicly announced the rules governing the deployment of xDSL technologies in its loop plant; and (2) applied those rules to its own deployment.

4. Central Office Equipment Attachment

ALTS agrees with the Advanced Wireline Services Order that: "there should be uniform national standards for attachment of electronic equipment (such as modems and multiplexers) at the central office end of a loop by incumbent LECs and new entrants" (at ¶ 163). Indeed, since there has to be a match between the network equipment in the central office and equipment residing on the customer's premises (the ATU-R; see HAI Broadband Paper at 83), ILECs are already obligated to create and publish appropriate interfaces under the Commission's existing rules concerning network interfaces.

While the publication of standards for proprietary equipment has only limited benefits, the enforcement of robust interface standards will speed the eventual adoption of uniform interface standards, with resulting reductions in prices and increased consumer satisfaction.[38]

---

[38] Currently an end user purchasing an xDSL modem has no assurance it can be reused if the end user were to move to a new location.

5. Unbundling Loops Passing through Remote Terminals

It is estimated that 35 million Digital Loop Carrier lines currently exist in the United States. Approximately 75% of these lines cannot be upgraded to provide xDLS service for one reason or another:

12M = Lucent SLC 96 (mid '80s) - not DSL capable
12M = Lucent SLC Series 5 units (late '80s) - not DSL capable
1M = Lucent SLC-2000 (current product) - DSL capable
7M = DSC Litespan (late '80s to present) - DSL capable, but already at or over 50% capacity with POTS traffic
3M = other vendors - perhaps half DSL capable

These figures are provided by Ed Pinkham of the Pinkham Group, who concludes that "without a substantial ILEC DSL upgrade investment, the issue of DSL circuits [over DLC] is largely moot."[39] Thus, the threshold issue both for ILECs and CLECs is whether ILECs will upgrade their DLCs to enable xDSL service platforms (what the HAI Broadband Paper refers to as "ADSL loop transport").

The HAI Broadband Paper contains a detailed discussion of the technical problems implicated in implementing DSL over existing DLC platforms (at 23-25). The basic problem is the large increase in bandwidth made available to each subscriber, at least an order of magnitude greater than POTS. Transporting this

---

[39] According to the Pinkham Group, the Lucent SLC 96 can support only two T1 spans maximum back to a serving wire center. While the Series 5 can support 192 DSOs (equivalent to 8 T1s), the Westell DSL port card provided by Lucent is not suitable for DSL implementation.

increased bandwidth back to the central office from the remote terminal requires significant augmentation of existing carrier loop systems. One alternative would be to breakout ADSL signals at the RT and tranport them through an adjunct multiplexer (id. at 24). Unless some solution is found to handle this increased bandwidth, the large number of end users served by DLC will be denied the benefits of ADSL.

Even if some ILECs choose to upgrade their DLC plant to support xDSL, they may intentionally select "closed" systems that effectively preclude CLECs from gaining access to the DLC terminals at the remote terminal locations (HAI Broadband Paper at 40). Such a strategy might be disguised by sizing RTs, and their associated power and environmental controls, in such a way as to effectively preclude access by multiple carriers.

The ILECs have been on notice since the August 1996 issuance of the Local Competition Order that they have the obligation to make loops available over DLC systems, an obligation reaffirmed in the Advanced Wireline Services Order (at ¶ 52). Thus, the ILECs should be required to discharge their legal obligation regardless of whether they implement DLC systems that are effectively "closed" to xDSL competitors. In situations where the ILEC's own DLC choices preclude the provisioning of xDSL transport UNEs, the ILEC should be required to provide the full service to the CLEC, and charge a price only for the equivalent of loop transport.

Turning to the specific proposal for unbundling DLC-delivered loops in the Advanced Wireline Services Order, ALTS supports all of the following:

- Any xDLS loops provided to an affiliate must also be provided to non-affiliated CLECs (at ¶ 168).
- CLECs may request any 'technically feasible' method of unbundling the DLC-delivered loop (at ¶ 171).
- CLECs should not be comparatively disadvantaged by ILECs regarding DLC-delivered loops (at ¶ 172). These include forcing a CLEC to choose between copper and DLC approaches, and refusing to make the DSLAM or DSLAM collocation available in the central office.
- CLECs should be allowed to use all xDLS deployment methods made available to an affiliate by an incumbent (id.).
- Deployment intervals should be the same for CLECs and affiliates (id.).
- ILECs must provide sub-loop unbundling and collocation at remote terminals unless ILECs can show such unbundling is not technically feasible, or that space is not available (but the latter excuse should not be permitted where the ILEC has upgraded the DLC to accommodate xDSL; at ¶ 174). Any sub-loop unbundling should be offered as an alternative solution and not as the exclusive approach to unbundling.
- Affiliate access to a DLC terminal demonstrates technical feasibility and space availability (id.).
- Space at remote terminals must be allocated in a competitively neutral fashion (at ¶ 175).

In sum, it is important that the Commission take robust action to insure that perhaps as much as a third of America's access lines (and an even higher percentage of residences) are not denied the benefits of competition for advanced wireline services. By issuing rules now before the ILECs start their DLC

upgrades, the Commission can help minimize or eliminate the foreseeable "excuses" that will otherwise delay the advent of meaningful competition.

IV. UNBUNDLING OBLIGATIONS UNDER SECTION 251(c)(3)

The Advanced Wireline Services Order inquires about the specific "network elements that incumbent LECs should be required to unbundle pursuant to section 251(c)(3)" (at ¶ 180). The HAI Broadband Paper sets out a list, which is described supra at Part III.B. None of these UNEs should be viewed as "proprietary" or "impairing" as those terms are used in section 251(d)(2).

The Commission has already addressed the these issues in its Local Competition Order,[40] and was upheld on these points in Iowa Utilities Board v. FCC, 120 F.3d 753, 810-12 (1997). The Commission's existing rulings are even more reasonable in the context of advanced wireline services, because the ILECs have not yet made much of the underlying investment, and thus are less able to claim any unfairness given their advance knowledge that these definitions will be applied.

---

[40] " ... [W]e interpret the 'impairment' standard as requiring the Commission and the states, when evaluating unbundling requirements beyond those identified in our minimum list, to consider whether the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network" (at ¶ 285).

Concerning NTIA's proposal that the Commission could determine that section 251(c) is implemented on a service-by-service basis, ALTS respectfully contends that such an interpretation is inconsistent with the statute and sound policy. As NTIA points out in its own ex parte dated July 17, 1998, section 10 of the Act carefully specifies the circumstances under which forbearance can be applied. Section 10(d) could not be clearer: " ... the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented" (emphasis supplied). Thus the Act itself denies authority for partial section 251(c) forbearance. And as a policy matter, such an attempt would be futile. Because UNEs can be employed for multiple purposes, there would be no meaningful way to link UNE provisioning with specific services. Indeed, there is no cogent way to even define what "service-by-service" forbearance from section 251(c) really means.

V. RESALE OBLIGATIONS UNDER SECTION 251(c)(4)

ALTS agrees with the Advanced Wireline Services Order that "[t]o the extent that advanced services are local exchange services, they are subject to the resale provisions of section 251(c)(4)" (at ¶ 61; see also ¶ 84). ALTS also agrees: " such advanced services are fundamentally different from the exchange access services that the Commission referenced in the Local Competition Order and concluded were not subject to section

251(c)(4)" (id. at ¶ 84; emphasis supplied).

The central difference between the DSL services addressed in the Advanced Wireline Services Order and the exchange access services discussed in the Local Competition Order is that the latter are directed to IXCs, while the former are offered to end users, such as ISPs. Thus, they clearly fall within the "core category of retail services that both Congress and the Commission deemed subject to the resale obligation ..." (id.).

VI. LIMITED INTERLATA RELIEF

The Advanced Wireline Services Order, as well as several section 706 petitioners, seem to suggest, or simply claim that the conferral of power over LATA border changes in the 1996 Act upon the Commission empowers it to dispense with LATA restrictions entirely in the case of advanced data services (at ¶ 193; "We seek comment on the criteria that we should use to evaluate LATA boundary modification requests that would allow BOCs to carry packet-switched traffic across current LATA boundaries for the purpose of providing their subscribers with high-speed connections to nearby network access points, which are points of access to the Internet").[41]

The text of the relevant provision states:

---

[41] See, e.g., Ameritech Section 706 Petition filed March 5, 1998, at 3.

"SEC. 3. [47 U.S.C. 153] DEFINITIONS.
"For the purposes of this Act, unless the context otherwise requires--

* * *

"(25) LOCAL ACCESS AND TRANSPORT AREA.--The term "local access and transport area" or "LATA" means a contiguous geographic area--
(a) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or
(b) established or modified by a Bell operating company after such date of enactment and approved by the Commission."

But the Commission has already acknowledged that forbearance of section 271 is squarely controlled by section 10. In Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona ("Minnesota LATA Order"), Order released April 21, 1997, NSD-L-97-6, the Commission rejected U S WEST's effort to remove all LATA borders within a state as improper until such time as U S WEST had entirely satisfied the requirements of section 271,[42] holding that: "The section 10(d) requirement means that the Commission must ensure that all the requirements of section 271 are implemented before a BOC may offer interLATA service" (at ¶ 25). By recognizing that section 10(d) controls any effort to forbear

[42] Under section 271 the Regional Bell Operating Companies may not provide any interLATA services except upon the filing and the grant of a section 271 application for each state. "Any services" obviously includes "high speed broadband services", regardless of how those are defined. The only exceptions are for "out of region services" and "incidental services."